Filed 6/11/19 In re N.D. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re N.D., a Person Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. J.D., Defendant and Appellant.	G056976 (Super. Ct. No. 18DP0936) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Gary L. Moorhead, Judge. Affirmed.

Jesse McGowan, under appointment by the Court of Appeal, for Defendant and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Deborah Morse, Deputy County Counsel, for Plaintiff and Respondent.

Konrad S. Lee, under appointment by the Court of Appeal, for the Minor.

N.D. (child) was declared a dependent two weeks shy of his 18th birthday. When he turned 18, and decided to remain a nonminor dependent, the court entered an order that appellant J.D. (mother) no longer had standing and terminated her reunification services. Mother appeals, claiming, services were ordered for her under Welfare and Institutions Code section 361.6 (all further statutory references are to this code), which allows them to continue after a child becomes a nonminor dependent. She argues in the alternative that services should be implied under that statute so she receives the benefit of her bargain in a plea agreement. Finally she contends that by ruling she had no standing the court in effect terminated her services in violation of section 361.6, subdivision (d), which requires a petition under section 388.

None of these claims persuades and we affirm the order.

FACTS AND PROCEDURAL HISTORY

At the end of August 2018 then 17-year-old child was removed from mother's custody pursuant to a protective custody warrant. The warrant application reported physical altercations between mother and child. Child reported mother pulls his hair, and hits, slaps and punches him; she attempted to choke him several times. Child stated mother physically abused him most of his life. Mother also made derogatory comments to child, telling him he was fat and autistic and was lucky to be alive because she could have aborted him. Mother also frequently locked child out of the house for extended periods of time as punishment.

Mother reported child had been diagnosed with attention deficit hyperactive disorder (ADHD), oppositional defiance disorder, autism, anxiety, and depression. He had been prescribed medication for ADHD.

At the time child was in a psychiatric unit pursuant to an involuntary hold after an incident with mother. Hospital staff advised living with mother was causing child to experience depression and anxiety, and manifest psychosomatic symptoms. They also noted child was cooperative, friendly, well-mannered, and able to focus on the

subjects of their discussions. Child reported he was afraid of what mother would do when he was released. He received a lot of support at school and did not want to miss it.

The court found removal of child from the home was an "immediate and urgent necessity" for child's protection. Child agreed with the decision. The petition alleged child came with the provisions of section 300, subdivisions (b) (failure to protect), (c) (serious emotional damage), and (g) (failure to support), the latter applying only to father whose identity and whereabouts were unknown. As to the first two counts, the petition alleged child suffered or was at risk of suffering emotional harm in mother's care, mother had not sufficiently dealt with child's mental health problems, and suffered from her own mental health issues.

At the detention hearing the court ordered child be put in foster care; minor agreed and mother submitted on that issue. Child was placed with an extended family member.

In the reports for the jurisdiction and disposition hearing child stated he did not feel safe in mother's care and again described mother's physical and verbal abuse, explaining he was forced to act in self-defense against mother. He also maintained mother exaggerated the magnitude of his mental health issues. He did not believe he was autistic and stated mother invented his alleged oppositional defiant disorder diagnosis. He contended mother had her own mental health problems, calling her paranoid and narcissistic, and believed she was bipolar. On more than one occasion he stated he did not want to reunify with mother.

Mother denied harming child but said she was the victim. She denied having any mental health issues. She provided a letter setting out the diagnoses of child's mental health issues. She reported she had sought additional treatment for child. However she was generally uncooperative in providing information as to child's doctors and mental health providers, refusing to sign medical releases.

Mother did not trust Orange County Social Services Agency (SSA) and believed it was influencing child to remain a nonminor dependent. During the interview mother's attorney had to redirect her. She "often went off topic and had a hard time answering the questions directly." Mother had difficulty understanding both why child had been removed from her custody and her rights during proceedings. She had trouble remembering information as to services being offered and asked the same questions previously answered.

After child was detained he received weekly therapy. His therapist reported he "consistently display[ed] good behavior and follow[ed] directions" and was "doing well." The therapist did not observe child being aggressive or oppositional. He was not depressed or anxious with his peers. His depression "revolve[d] around his mother" and he became oppositional when communicating with mother. The therapist reported child was "adamant" about not reunifying with mother.

Child's school psychologist reported an evaluation showed child did not have autism spectrum disorder. Rather, he socialized well and had "meaningful friendships." Mother had not given any documentation to the school to support that diagnosis. School records reflected child's only diagnosis was for attention hyperactivity disorder.

The school psychologist also reported mother was always confused and could not understand the individualized education plan (IEP) process. The social worker noted the same confusion in mother during a later IEP meeting. Child was doing well in school, turning in his assignments timely. He did not have difficulty concentrating or socializing. Teachers described him as "friendly, smart, kind and sociable." He had "'changed so much'" since being removed from mother's custody. They believed the negative behavior mother reported occurred only in her home and did not believe it was in child's best interest to return to mother's care.

In the initial report SSA recommended the petition be sustained and child be declared a nonminor dependent. When he turned 18, mother should not be a party to the proceedings and visitation should be terminated. In an addendum report SSA recommended services be provided to mother. A subsequent addendum stated it was "imperative" child be declared a dependent before he turned 18 so additional services could be provided for him to "achieve independence and not be exposed to continual emotional harm by . . . mother."

Prior to the jurisdiction and disposition hearing mother's counsel and county counsel discussed a potential resolution of jurisdiction whereby the section 300, subdivision (c) allegations of severe emotional harm would be deleted from the petition and mother would plead nolo contendere to the allegations under section 300, subdivisions (b) (failure to protect) and (g) (no provision for support by father). When the hearing commenced mother and the court engaged in a lengthy discussion about it.

The court advised mother of the proposed amended petition. It noted mother's counsel had represented she wanted to proceed with the trial, "which is your absolute right." It explained that if there was a trial, it would be on the original petition and child would be testifying. It further stated having an older child testify can "drive a wedge deeper between the child and the parents," "but, if you think that that's the best interest of your child and you want to take that risk, I am more than happy to" conduct the trial. It wanted to be sure mother understood how the trial would be conducted with testimony by her, child, and perhaps other witnesses.

Mother was allowed to address the court about her concerns. She said she had thought the hearing was going to be continued and felt "blind[]sided" and upset because she was not "fully prepared." She explained what she had done over the years to get help for child.

The court believed child would testify he was afraid to go home; mother believed the same thing. The court explained the hearing was to make a determination as

to that and other facts alleged. It believed it would be better for mother not to go through that process but instead agree to plead no contest to the amended petition. In that case, all of the other allegations, including that mother had a criminal and drug history, would "go away" and SSA could start providing services to mother.

Mother was concerned the petition stated she was "not going to be [child's] mom." The court assured her no such declaration would be made because child was going to be an adult. When mother asked about her parental and educational rights, the court advised that when child turned 18 in two weeks, he would make those decisions himself. Further, "You can't force him to live with you once he's an adult." The court noted that if it found child to be a dependent before he reached 18, he would be entitled continued services as a nonminor dependent. Without such a finding before age 18, child would not be entitled to those services.

The court adjourned the hearing to give mother an opportunity to raise any questions with her lawyer.

After the lunch recess, the court dismissed the section 300, subdivision (c) count of the petition and mother pleaded nolo contendere to the amended petition alleging child came within the provisions of section 300, subdivisions (b) and (g). Mother acknowledged she had signed and initialed the plea form, and further acknowledged she understood her rights and the consequences of the waiver. The court found mother "intelligently, knowingly and voluntarily" waived her constitutional rights and her counsel joined.

The court further found the allegations of the amended petition were true and declared child a dependent. It removed child from mother's custody and ordered services. It set a nonminor six-month review hearing for March and a nonminor progress review hearing for October 9, two days after child's 18th birthday. The court also filed an order and findings for child approaching age of majority, which stated child intended to remain under the court's jurisdiction as a nonminor dependent.

Reports for the progress review hearing stated child did not wish to reunify with mother. When the social worker discussed the possibility of child returning home, with services for him and mother, child was "adamant about not returning to the home with . . . mother." He explained he wanted to be independent and did not feel safe returning home because he did not think mother would change even if she had individual therapy. He stated "being with the mother is overwhelming and has contributed to his depression." Child "repeatedly" said he "want[ed] to live with a normal family" and not "in continual abuse." After child's visits with mother he was sad or angry; mother was continually "pressuring him to go back home." SSA recommended the court retain jurisdiction over child as a nonminor dependent, the visitation plan be vacated, and mother no longer be a party to the action.

It was reported mother did not appear to understand the dependency process. She sent several e-mails to SSA claiming due process and her civil rights were being violated. She also demanded therapy for both herself and child. SSA reported several attempts to find an available therapist, for mother as she had been on waiting lists. Child's therapist reported conjoint therapy was not advisable because child was not willing to participate and because the relationship was emotionally abusive.

At the October 9 progress review hearing, mother complained to the court she had not received any reunification services and spoke of child's alleged disabilities. She also asked for a continuance to obtain new counsel. In agreeing to the continuance, over SSA's and child's objections, the court noted, contrary to mother's claim, child was no longer a minor and the hearing would be for the limited purpose of a progress report on child's nonminor status. Mother filed a declaration to withdraw her plea on the ground she had been "forced to plea under duress and false pretenses."

At the continued hearing mother attempted to file a motion, to which SSA and minor's counsel objected on the ground she lacked standing because child was no

longer a minor. The court ordered mother to file points and authorities as to her standing and continued the progress review hearing again.

At the second continued hearing, the court ruled mother had no standing because child was no longer a minor. It also found there was no competent evidence to show child was incompetent at the time he turned 18.

DISCUSSION

1. Section 361.6 Services

Mother argues the court ordered reunification services under section 361.6. For minor dependents reunification services are provided pursuant to section 361.5. For nonminor dependents, under section 361.6 a "court may order family reunification services to continue . . . if the nonminor dependent and parent . . . are in agreement and the court finds that the continued provision of court-ordered family reunification services is in the best interests of the nonminor dependent and there is a substantial probability that the nonminor dependent will be able to safely reside in the home of the parent . . . by the next review hearing."

Mother claims that, because the original services were ordered only 12 days before the child turned 18, the court "almost certainly meant" to order services under section 361.6. She points out the order provided approved a case plan listing services for mother to complete in six months and ordered a nonminor six-month review hearing. She concludes the court would not have "pointlessly" ordered only 12 days of services.

But the court had no authority to order services under section 361.6 at the disposition hearing. The statute sets out specific requirements that must be met. First, it applies only to a nonminor dependent. Child was not a nonminor dependent at the time of the disposition hearing. (§ 361.6, subd. (a) [in addition to other elements, nonminor defined as 18 years or older].)

Second, section 361.6 speaks of the continuation of services, not an order for services in the first instance. Third, the court may order those services only if the

nonminor and parent are in agreement. Here, there was no such agreement. In fact, child specifically did not want to reunify and the court could not compel him to do so. Nor could mother. Fourth, the court must find nonminor would be able to safely reside in the parent's home. Given child's opposition to returning home and the emotional distress it caused him, this element cannot be satisfied either.

We reject mother's argument there was no evidence in the record to show child opposed reunification with mother. Her claim the SSA report did not quote child directly is inaccurate. SSA reports contained numerous quotes from child where he expressed his opposition to reunification, as summarized above. And there is no requirement for direct quotes. Further, we reject mother's assertion that even if child stated he had no intention to reunify it did not "automatically mean" he opposed services to "repair[] his relationship" with her with the possibility he might return home. This claim flies in the face of actual evidence. Moreover, child filed a brief in this appeal joining in SSA's brief, reiterating he did not want any services for mother.

Additionally, the court was specifically aware child was turning 18 in 12 days, ordering a nonminor progress review hearing for a day two days after child's 18th birthday. If services had been appropriate under section 361.6, that would have been the time to order them. That statute allows services to "continue," upon satisfaction of conditions, including child's agreement. A dependent child who has turned 18 is an adult with all the rights of an adult. (*In re David B.* (2017) 12 Cal.App.5th 633, 650.) He or she cannot be returned to the physical custody of a parent and parental authority ceases. (*In re K.L.* (2012) 210 Cal.App.4th 632, 642, 643.) Unless the provisions of section 361.6 are met, a parent has no right to reunify with a nonminor adult and services are not required or available. (*Id*. at p. 643.) Here, section 361.6 was not satisfied for all the reasons listed above, including that child did not agree to reunification.

Moreover, in her reply brief mother conceded the court did not "expressly order services [pursuant] to section 361.6."

Taking another tack, mother contends an order for services under section 361.6 should be implied to hold SSA "accountable" to the terms of the plea agreement. This argument fails as well.

Mother claims she "reluctantly" pleaded nolo contendere after the agency agreed to provide services to her and the court "persuade[d]" her to enter the plea by offering her services. She asserts she is "entitled to the benefit of the bargain." She further contends any reasonable person would have expected to receive six months of services under section 361.6. We disagree.

First, as explained above the court had no authority to offer services under section 361.6. Contrary to mother's argument, she could not have reasonably believed otherwise. (*In re Timothy N*. (2013) 216 Cal.App.4th 725, 734 [interpretation of plea agreement in dependency action based on "'objective standard'" where parent's """reasonable beliefs control"""].) That mother was offered services in connection with her plea agreement does not mean she was offered six months of services under section 361.6. As noted above, had child agreed after his 18th birthday, services could have continued for mother.

Second, mother was represented by counsel, had the court explain the process to her, and was given time over the lunch break to decide whether to take the plea. The court found she "intelligently, knowingly and voluntarily" entered into it and her counsel joined. Nothing in the plea stated services were provided under section 361.6. Mother's claim she would not have entered into the plea based on a "meaningless gesture" of a short period of services has no support in the record and evidences at best her subjective intent, which is not dispositive in interpreting a plea agreement. (*In re Timothy N., supra,* 216 Cal.App.4th at p. 734 [party's """undisclosed subjective intent""" irrelevant in construing plea agreement].) In fact, this argument appears to be an attempt to litigate her unperfected motion to set aside her plea agreement. We will not decide it under the guise of this claim.

Third, mother presumes that had she litigated the petition rather than entered a plea the result would have been different. But the record does not support that premise. And had the court sustained jurisdiction after a hearing, the result would have been the same. Assuming services would have been ordered, they would have been ordered under section 361.5, not section 361.6.

That child did not oppose the plea agreement and benefitted from it are irrelevant. Mother's argument child should "bear the cost" of her plea is puzzling and without merit. That is not the standard by which this claim is determined. Further, mother benefitted from her plea as well.

Moreover, mother fails to acknowledge that at the second continued progress review hearing, her counsel affirmatively stated mother was "not asking for services unless" child wanted it. Instead, she just wanted "to be able to come before the court under a parent status" and provide information. In addition to everything else, this waives mother's assertion she has a right to services.

2. Standing

At the nonminor progress review hearing the court ruled mother had no standing to continue participating in the process. Mother contends this violated section 361.6, subdivision (b), which requires a section 388 petition to terminate services. But services were not ordered under section 361.6, so no section 388 petition was required.

Moreover, as stated above, once child turned 18 mother had no legal right to child's companionship. (*In re. J.C.* (2014) 222 Cal.App.4th 1489, 1493; *In re Holly H.* (2002) 104 Cal.App.4th 1324, 1336.) And child did not want to reunify.

Further, mother has not made any argument about why she did have standing. Thus, the argument is waived for failure to provide authority and reasoned legal argument. (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.)

DISPOSITION

The order is affirmed.

THOMPSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.